

to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development have little or no production or other service activities and may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, contractor cost participation could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost. Ultimately, the Contracting Officer should bear in mind that cost-sharing is a negotiable item. As such, the amount of cost-sharing should be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

[66 FR 4251, Jan. 17, 2001, as amended at 71 FR 76504, Dec. 20, 2006]

### **335.070-3 Method of cost-sharing.**

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program).

### **335.070-4 Contract award.**

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

### **335.071 Special determinations and findings affecting research and development contracting.**

OPDIV heads for health agencies shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

## **PART 339—ACQUISITION OF INFORMATION TECHNOLOGY**

Sec.

339.201-10 Clarification.

339.201-70 Required provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 71 FR 76504, Dec. 20, 2006, unless otherwise noted.

**339.201-10****339.201-10 Clarification.**

FAR Subpart 39.2, Electronic and Information Technology, requires Federal agencies to ensure that, when acquiring EIT, Federal employees with disabilities and members of the public with disabilities have access to and use of information and data that is comparable to individuals without disabilities. This EIT access requirement does not apply to a contractor's internal workplaces. EIT that is not used nor accessed by Federal employees or members of the public is not subject to the Architectural and Transportation Barriers Compliance Board (Access Board) standards. Contractors in their

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professional capacity are not members of the public for purposes of Section 508.

**339.201-70 Required provision and contract clause.**

When acquiring EIT, the Contracting Officer shall insert the provision at 352.270-19(a) in solicitations and the clause in 352.270-19(b) in contracts and orders for projects that will develop, purchase, maintain, or use electronic and information technology (EIT), unless these EIT products and/or services are incidental to the project. (Note: Other exceptions to this requirement can be found at FAR 39.204.)